

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1729 OF 2021

Mohhammad Javed S/o. Abdul Kayyum,
Aged about years Occ. Service, R/o Pethpura,
Yavda, Taluka – Daryapur, District - Amravati

Petitioner

Versus

1. The Divisional Commissioner, Amravati Division,
Amravati
2. Zilla Parishad, Akola through its Chief Executive
Officer
3. Education Officer (Primary), Zilla Parishad, Akola,
Dist. Akola

Respondents

WITH
WRIT PETITION NO. 1730 OF 2021

Sheikh Mustaque Abdul Sattar, Aged about 40
years, Occu. Service, R/o Kholpauri Gate,
Daryapur, Tq. Daryapur, District - Amravati

Petitioner

Versus

1. The Divisional Commissioner, Amravati Division,
Amravati
2. Zilla Parishad, Akola through its Chief Executive
Officer
3. Education Officer (Primary), Zilla Parishad, Akola,
Dist. Akola

Respondents

WITH
WRIT PETITION NO. 4343 OF 2021

Yunus Parvez S/o Mohammad Iqbal, Aged about

Petitioner

42 years, Occu. Service, R/o Patur, Taluka Patur,
District Akola

Versus

1. The Divisional Commissioner, Amravati Division,
Amravati
2. Zilla Parishad, Akola through its Chief Executive
Officer
3. Education Officer (Primary), Zilla Parishad, Akola,
Dist. Akola

Respondents

Mr. Ram D. Karode, Advocate for petitioner in all petitions
Mr. K.L. Dharmadhikari, AGP for respondent No.1 in all petitions
Mr. A.M. Tirukh, Advocate for Respondent No.3 in all petitions

CORAM : MANISH PITALE, J.

DATE : 19th JULY, 2022

ORAL JUDGMENT

Rule. Rule is made returnable forthwith.

2. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader
waives service for respondent No.1.

3. Mr. A.M. Tirukh, learned counsel waives service for respondent
No.3.

4. By these three petitions, the petitioners are challenging orders
passed by the Respondent – Divisional Commissioner, whereby their
appeals were dismissed and they have also challenged communications
dated 21/10/2016, issued by the respondent No.3, asking the

petitioners to produce caste validity certificates, in the absence of which appropriate action would be taken against them.

5. The petitioners contend that they had applied for appointment to the post of “Shikshan Sewak”, to be later on appointed as per a Government scheme as “Assistant Teachers”, pursuant to advertisement dated 09/02/2006, issued by the respondent – Zilla Parishad. It is claimed on behalf of the petitioners that in pursuance of the said advertisement, they had applied for appointment in the open category. They were selected on merits, but, the appointment orders dated 20/05/2006, issued in favour of the petitioners erroneously stated that their appointments were in the scheduled tribe category.

6. The petitioners sent communications / applications to the respondent No.3 immediately after their appointments on 20/07/2006, seeking correction of the appointment orders, specifically requesting that they ought to be shown as appointed in the open category because their applications were also made in the said category. No action was taken on the said applications submitted by the petitioners. After about 10 years of the appointment of the petitioners, the aforesaid impugned communications dated 21/10/2016, were issued to the petitioners asking for submission of caste validity certificates.

7. Aggrieved by the same, the petitioners filed appeals before the Divisional Commissioner. By impugned order dated 25/01/2021, the appeals were dismissed, as a result of which, the petitioners face the threat of action against them in the absence of submission of caste validity certificates.

8. The petitioners filed the present writ petitions, wherein notices were issued and the respondents entered appearance through counsel.

9. Mr. Ram Karode, learned counsel appearing for the petitioners submitted that there was no propriety on the part of the respondent No.3 to have issued the impugned communications, asking the petitioners to submit caste validity certificates because the appointments of petitioners could never be said to have been made under the scheduled tribe category. It was submitted that apart from the petitioners having immediately submitted the said applications for correction of their appointment orders, conduct of the respondent Nos.2 and 3 itself indicated that the petitioners were treated as having been appointed in the open category. Reliance was placed on the seniority list dated 01/09/2007, issued by the respondent No.2, wherein all the three petitioners were shown as belonging to the open category. Similarly, 100 point roster prepared on 01/09/2007, also

showed the petitioners as belonging to the open category. On this basis, it was submitted that the respondent Nos.2 and 3 ought not to be permitted to take action against the petitioners for not having submitted caste validity certificates. It was submitted that in this backdrop, it was evident that the respondent – Commissioner erred in dismissing the appeals and in proceeding on the basis that the petitioners had sought appointment in the reserved category, although they did not belong to such category.

10. Mr. Tirukh, learned counsel appearing for the contesting respondent Nos.2 and 3 submitted that certain documents were placed on record with the reply-affidavits in these three petitions to show that the mistake that had occurred in earlier seniority list and 100 point roster was subsequently corrected in the year 2018, by recording that the petitioners were in the category of the scheduled tribe and that, therefore, the petitioners were not entitled to take advantage of the earlier seniority list and 100 point roster prepared by the office of the respondent No.2. It was submitted that the petitioners were aware that the appointment orders specifically stated that their appointments were made in the scheduled tribe category and that, therefore, it was necessary for them to produce validity certificates.

11. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader appeared on behalf of respondent No.1.

12. This Court has considered the documents on record in the backdrop of the submissions made by the learned counsel for the rival parties. The only explanation put-forth on behalf of respondent Nos.2 and 3 is that documents issued mistakenly in the form of seniority list and 100 point roster in the year 2007, were corrected subsequently and that as per the records of respondent Nos.2 and 3, the petitioners belonged to the scheduled tribe category, having been appointed in the said category and that, therefore, it was mandatory for them to have produced the caste validity certificates. On this basis, the impugned orders were sought to be defended.

13. This Court has carefully considered the documents on record. The advertisement dated 09/02/2006, shows that four posts in the open category were to be filled, apart from the posts to be filled in other categories, including 9 posts in the scheduled tribe category. The petitioners applied in pursuance of the said advertisement for being appointed in the open category. They never claimed to belong to the scheduled tribe category or that their candidatures were to be considered under the said category. But, appointment orders dated

20/05/2006, stated that they were appointed in the scheduled tribe category. It is an admitted position on record that all the three petitioners, within months of their appointments sent specific applications to the respondent No.3 i.e. the Education Officer (Primary) of the Zilla Parishad, praying for correction of their appointment orders. It was highlighted on behalf of the petitioners that they had applied in pursuance of the said advertisement for appointment in the open category and that, therefore, the mistake that had occurred in the appointment orders issued by the said office was required to be corrected immediately.

14. It is an admitted position that no action was taken by the respondent Nos.2 and 3, despite specific applications for correction of appointment orders submitted on behalf of the petitioners.

15. Instead, in the year 2007, the respondent No.2 itself showed the petitioners in the seniority list as well as 100 point roster, as belonging to the open category. It appears that after having issued the impugned communications dated 21/10/2016, asking the petitioners to submit caste validity certificates, in the absence of which action would be initiated against them, corrections were made by the respondent Nos.2 and 3 in the 100 point roster in the year 2018, to show that the

petitioners were appointed in the scheduled tribe category.

16. The aforesaid material submitted on record clearly indicates that there is substance in the contentions raised on behalf of the petitioners. Having applied in the open category in pursuance of the advertisement issued by the respondents and having been selected, when the appointment orders were issued, they were wrongly shown as appointed in the scheduled tribe category. It would have been another matter if the petitioners had kept quiet and proceeded to enjoy such appointments, without bringing to the notice of respondent Nos.2 and 3 that they belong to the open category and that the appointment orders appeared to be erroneous. But, the admitted position on record in the present cases is that immediately after their appointment the petitioners did move specific applications before the respondent No.3 for correction of the appointment orders to show them as appointed under the open category, as they had applied in the open category in pursuance of the said advertisement. The respondent Nos.2 and 3 took no action on the said specific applications moved on behalf of the petitioners.

17. It is also an admitted position that in the seniority list and in the 100 point roster issued in the year 2007, the petitioners were indeed

shown in the open category, which clearly gave an impression to the petitioners that their applications for correction in the appointment orders had been acted upon and it is for this reason that they were shown in the open category in the said documents.

18. After more than 10 years of their appointment, the petitioners were served with the aforesaid communications dated 21/10/2016, asking them to submit caste validity certificates, in the absence of which action was sought to be initiated against them. In this backdrop, the petitioners filed the appeals before the respondent No.1 – Commissioner, seeking redressal of their grievances.

19. But, in the impugned order, dated 25/01/2021, the Divisional Commissioner in a verbose order has completely missed the most crucial point. The impugned order has proceeded on the basis, as if the petitioners were seeking to usurp posts meant for reserved category and the appeals have been dismissed primarily by adopting such approach. There is no consideration at all of the aforesaid material, specifically brought to the notice of said authority by the petitioners.

20. Even before this Court, the respondent Nos. 2 and 3 had no explanation except relying upon 100 point roster of the year 2018, to claim that correction had been made in the records to now show the

petitioners as appointed in the scheduled tribe category. The said explanation cannot be accepted for the reason that respondent Nos. 2 and 3 failed to respond to the timely applications / representations made by the petitioners for correction in the appointment orders. It is not as if in the advertisement dated 09/02/2006, posts only for the scheduled tribe category were advertised and the petitioners had applied under such category. The record shows that the petitioners had applied in the open category and, that there were four posts specified in the aforesaid advertisement for open category. In this backdrop, this Court is convinced that the respondent Nos.2 and 3 could not have called upon the petitioners to submit caste validity certificates and to threaten action against them in absence of submission of such certificates. The petitioners never claimed to belong to the scheduled tribe category and, therefore, there was no question of proceeding against them in the absence of submission of caste validity certificates. The impugned action on the part of respondent Nos.2 and 3 smacks of arbitrariness and, therefore, deserves to be set aside.

21. Accordingly, the writ petitions are allowed. The impugned orders dated 25/01/2021, issued by respondent No.1 – Divisional Commissioner and dated 21/10/2016, issued by the respondent No.3 –

Education Officer (Primary), Zilla Parishad, Akola, are quashed and set aside and it is directed that the petitioners shall be treated as having been appointed in the open category.

22. Rule is made absolute in above terms.

23. Pending applications, if any are disposed of.

JUDGE

MP Deshpande